COMMERCE CASE MANAGEMENT PROGRAM DECISIONS: SETTLEMENT AND RELEASES

BY

Victoria T. Mazgalev and Gittel Hilibrand[1]

The Commerce Court has dealt with many Settlement and Release Cases. In its opinions, the Court consistently holds that cases involving Settlements and Releases are governed by principles of contract law. While the fact patterns vary, the general rule is that if the settlement or release is unambiguous, the Court will uphold its terms. The Court will not impose its own judgment onto the parties. In addition, the Court will not imply terms into the settlement or release that have not been included by the parties. The cases are grouped below into several categories: (1) Upholding Terms of Settlement Agreement or Release; (2) Parties to a Settlement Agreement or Release; (3) Modification of Terms of Settlement Agreement Or Release By Parties; (4) Jurisdiction of Action Relating to Settlement Agreement Or Release; (5) Class Actions; (6) Malpractice Actions Relating to Settlement Agreements.[2]

---

[1] Victoria T. Mazgalev, Esquire, University of Pennsylvania, Class of 2009, and an associate with Fried, Frank, Harris, Shriver & Jacobson, L.L.P. is co-author and Gittel Hilibrand, Esquire of Schnader Harrison Segal & Lewis, LLP is co-author and editor. None of these materials is offered, nor should be construed, as legal advice. The information provided should not be relied upon as legal advice or a definitive statement of the law. For such advice, the reader should consult his or her own legal counsel. The views, information and content expressed herein are those of the authors and do not represent the views of their law firms, which did not participate in and take no position on the nature, quality, or accuracy of such content. This chapter is part of the Commerce Case Management Program Opinion Project. Inquiries can be made to Project Coordinator Lee Applebaum at 215-893-8702, lapplebaum@finemanlawfirm.com).

[2] This Chapter is current through April 2011.

UPHOLDING TERMS OF SETTLEMENT OR RELEASE

Barry Bernsten, et. al v. Daniel Bain, et. al., December Term 2003, No. 0130, (C.C.P. Phila. April 30, 2009) (Sheppard, J.) (Court held that the language of the settlement agreement was unambiguous and required plaintiff to pay money and give stock), aff'd without opinion, 4 A.3d 697 (Pa. Super. 2010).
This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/031200130.pdf.

Plaintiff Bernsten and Churchill had a Settlement Agreement that required Bernsten to: (1) pay Churchill twenty percent of money Bernsten received arising out of a steel plant project, and (2) to also give Churchill a percentage of stock in Bernsten's company. After several rounds of litigation between various parties, Churchill filed a Motion to Enforce Settlement for twenty percent of the money that Bernsten received from another litigation arising from the steel plant project. The Court held in favor of Churchill under the plain language of the Settlement Agreement.

Plaintiff Bernsten and defendant Bain formed Consolidated Industries, Ltd. ("Consolidated") to build and operate a steel plant in Tallinn, Estonia. Churchill purchased a portion of Bain's interest in the steel plant, which shortly became the subject of this litigation. Bernsten and Churchill entered into the Churchill Settlement Agreement. The Agreement provided that Churchill was entitled to twenty percent of payments made to Bernsten arising out of the steel plant project and Churchill would receive twenty percent of the Consolidated's stock. Following that settlement, Bernsten entered into a separate Bain Settlement Agreement with defendant Bain, but Bain defaulted and the Court entered judgment in favor of Bernsten for $3.1 million.

Later, Bain filed for Bankruptcy. Bernsten moved to intervene and as part of the settlement received $1.6 million. Churchill demanded $320,000, twenty percent of the $1.6 million. Churchill filed a Motion to Enforce Settlement for the $320,000. Bernsten opposed the motion, claiming that his obligation was satisfied by transferring the Consolidated stock to Churchill.

The Court explained that settlement agreements are "regarded as contracts" and are enforced under contract law principles. If the language is unambiguous, then the intent of the parties is taken from the language in the settlement agreement. In this case, the Churchill Settlement Agreement clearly stated that Churchill would receive twenty percent of any payments or distributions received by Bernsten arising out of the steel plant project, in addition to the twenty percent of the stock of Consolidated. The Court found that the language of the Churchill Settlement Agreement was unambiguous. Thus, since Bernsten received a settlement from Bain relating to the litigation from the steel plant project, twenty percent of that amount is due to Churchill pursuant to the terms of the Churchill Settlement Agreement.

Christopher Tinari v. Allstate Financial Services Group, LLC and Julian Hinson, No. 2676, 2007 Phila. Ct. Com. Pl. LEXIS 230 (C.C.P. Phila. August 15, 2007) (Sheppard, J.) (Court will not rewrite the terms of an unambiguous settlement agreement because one party made a bad bargain and later regrets it).

Plaintiff sued defendants to enforce a prior Settlement Agreement. The Court denied plaintiff's motion to enforce the agreement; plaintiff appealed and the Court reaffirmed its original holding.

In 2005, Plaintiff Tinari sued Allstate and Hinson for failing to provide mortgage funds in relation to some Florida investment properties, as well as consequential

damages. The parties entered into a Settlement Agreement which provided that "this contract will create a working relationship between Julian Hinson and Christopher Tinari for such length of time as needed to satisfy the terms." The terms provided for a payment to Tinari, contingent on Tinari (a real estate agent) referring prospective mortgage clients to Allstate/Hinson. When such referrals were consummated, Tinari would receive an amount equal to Hinson's customary commission until the settlement amount was fully paid. After about twenty percent of the settlement amount was paid, Tinari left the real estate business entirely and stopped making referrals to Allstate. In this action, he sought the remaining balance, arguing that he provided consideration by dismissing the underlying suit.

In denying Tinari's claim, the Court first noted that "there is a strong judicial policy in favor of resolving law suits through settlement agreements" and thus, "absent fraud or mistake, courts will not intervene to second guess or undermine the original intention of the parties." The Court observed that the Settlement Agreement was a contract based on mutual obligations of the parties. Thus, the "plaintiff has a free and fair opportunity to negotiate the terms of the settlement. It is not the court's job to rewrite the Agreement if plaintiff made a bad bargain and did not provide for a possible change of his financial circumstances." Therefore, since the Settlement Agreement was unambiguous in its terms, and since Tinari could still continue to make referrals to Allstate despite not being in the real estate business, the Court refused to intervene in amending the Agreement.

<u>Synnestvedt & Lechner, LLP v. Green Machine Corp.</u>,; <u>Vaughn Duffy & Connors, LLP v. Synnestvedt & Lechner, LLP</u>, January Term 2006, Nos. 208 and 763 (C.C.P. Phila. Mar. 9, 2007) (Bernstein, J.), (Court required payment of settlement amount when the terms of such payment in the agreement were unconditional). This opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/060100208.pdf.

Defendant/counterclaimant, Green Machine Corp., filed a motion for summary judgment regarding a disagreement over a Settlement Agreement entered into by plaintiff law firm and defendant following a legal malpractice suit. Plaintiff law firm also moved for summary judgment. The Court held that plaintiff law firm was required to make the unconditional payment required by the Settlement Agreement and could not impose unwritten conditions to prevent payment.

As part of the settlement negotiations of a legal malpractice suit, Synnestvedt & Lechner LLP (S&L) entered into a Settlement Agreement with Green Machine Corp. and one of its principals, Edward Zuzelo. At the time, Green Machine Corp. had a writ of execution pending against it on a previously obtained $1.5 million judgment by Chiuminatta Concrete Concepts. Thus, the Settlement Agreement provided that the law firm would pay funds directly to Zuzelo and not to Green Machine Corp. Both sides were fully aware of the Chiuminatta judgment when the Agreement was drafted and executed. No provisions in the Agreement allowed S&L or its insurer to withhold payment for any reason. Nevertheless, one day after payment was due, S&L and its insurer refused to pay, claiming that counsel for Chiuminatta were objecting other payments of funds and that there would be no payment until counsel for Chiuminatta was satisfied.

The Court reviewed the depositions of the law firm's counsel and concluded that S&L "never had any intent to comply with the terms of the Settlement Agreement."

Instead, "rather than negotiating to conclusion the issues about the pending attachment, S&L and [its insurer] made the decision to avoid trial by pretense of settlement, signing the Settlement Agreement without any intention of making the payments as required unless Chiuminatta approved." The Court recognized that Zuzelo would never have agreed to a condition requiring Chiuminatta to agree to payment and it was therefore not included in the Settlement Agreement. The Court refused to permit S&L to impose unwritten conditions which had been specifically rejected in negotiation. The Court held that the terms of the Settlement Agreement unconditionally required payment and granted summary judgment in favor of Green Machine Corp. and Zuzelo; S&L's motion for summary judgment was denied.

Kleinknecht Elec. Co., Inc. v. Jeffrey M. Brown, Assoc., Inc., September Term 2003, No. 4997, 2006 Phila. Ct. Com. Pl. LEXIS 180 (C.C.P. Phila. April 10, 2006) (Bernstein, J.) (Court held that failure to sign a final release/waiver is not reason to withhold final payment from a contractor; party cannot evade clear language of release by arguing that it did not intend to release a claim in dispute). This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/030904997.pdf.

Plaintiff Kleinknecht, an electrical contractor, brought a breach of contract claim against defendant Jeffrey Brown, a general contractor, for unpaid construction fees as well as a separate 'cost of impact' claim. Before the Court were both parties' motions for summary judgment. The Court granted plaintiff's summary judgment motion for unpaid construction fees, The Court also granted defendant's summary judgment to dismiss the "cost of impact" claim because it was barred by a release signed by plaintiff.

The plaintiff and defendant entered into a subcontract for plaintiff to perform electrical work at a construction project in New Jersey. The subcontract required plaintiff to provide defendant with partial or final releases/waivers periodically as required; during

the course of the project, plaintiff executed 25 such partial releases. However, plaintiff later alleged that defendant engaged in wrongful conduct that impacted the cost of the work. When the work was completed, plaintiff submitted its requisition for payment to the Owner. The Owner authorized defendant, his agent, to pay the full amount, but defendant withheld $942,731 of the payment from plaintiff. Defendant claimed that plaintiff was not entitled to the payment because it had not yet signed a final release, waiver of lien, and other closeout documents required by the subcontract. Plaintiff additionally brought a claim for 'cost of impact' expenses resulting from defendant's altering the course of the work, delaying design decisions, etc.

First, the Court held that plaintiff's failure to sign the final releases did not preclude its recovery of the contracted fees that it was owed. Indeed, by virtue of the suit alone, "reasons exist why these documents should not be signed at this time." The Court granted plaintiff's motion for summary judgment for the $942,731.

Second, the Court denied plaintiff's claim for 'cost of impact' because it had signed partial releases which released defendant from all claims against it at the time of execution. Since plaintiff's cost of impact claims had accrued prior to the signing of the last partial release, they were barred by the release. The Court noted that "Kleinknecht's [plaintiff's] inability to ascertain the actual cost of impact at the time the events occurred does not preserve the impact claim" because "a party cannot evade the clear language of a release by contending that it did not subjectively intend to release a claim in dispute." Since consideration was given and plaintiff had actual knowledge that the delays were impacting the cost of the work, it should have reserved the right to bring a cost of impact

claim prior to executing the releases. The Court granted defendant's summary judgment to dismiss that claim.

Aetna Inc. v. Lexington Insurance Co. and National Union Fire Insurance Co., October Term 2003, No. 3572 (C.C. P. Phila. October 27, 2005) (Sheppard, J.) (Court held that release language must be interpreted based on intent of the parties and surrounding circumstances).
This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/031003572.pdf.

Plaintiff sought review of the Court's denial of its motion to enforce settlement and the Court's grant of a motion to enforce settlement as filed by the defendants. The Court affirmed its original Order.

This case was an insurance coverage action relating to litigation in Texas against an insured subsidiary of Aetna. The parties in that case settled with Aetna in exchange for an $8.25 million payment. Aetna spent another $10.2 million in attorney's fees when defending against the original claims. Subsequently, Aetna sought reimbursement from the defendants, its re-insurers, in the amount of the $8.25 million settlement and $7.2 million of its legal fees (the remaining $3 million was paid by Aetna's 'captive reinsurer,' ARIC). Following mediation, the plaintiff and defendants reached a Settlement Agreement wherein defendants would pay Aetna $4.455 million in two equal installments. The Agreement also included a provision that ". . . [The defendants] release and forever discharge Aetna . . . from any and all claims . . . and causes of action whatsoever (including any purported claims for reinsurance or additional premium or payment of any type from the Aetna Releasors, including ARIC . . . ."

After the first payment was made, Aetna contacted the defendants and informed them that the Settlement Agreement had also included relinquishment by defendants of claims for reinsurance against an Aetna affiliate, ARIC, on a $30 million at-risk policy.

The defendants disagreed with this interpretation of the Settlement Agreement and did not pay the second installment, instead placing it in escrow. Thereafter, both parties filed actions to enforce the Settlement Agreement.

The Court explained that Pennsylvania law interprets releases as "covering only such matters as can fairly be said to have been within the contemplation of the parties when the release is given,"[3] and that "releases are strictly construed so as not to bar the enforcement of a claim which had not accrued at the date of the execution of the release."[4] Thus, claims that have not accrued cannot be said to have been within the contemplation of the parties.

The Court noted that the language of the Settlement Agreement itself did not specify whether ARIC was being released in its capacity as a 'captive reinsurer' of $3 million or a reinsurer on the $30 million at-risk policy. However, the fact that Aetna identified ARIC as a captive reinsurer in its own complaint elucidated the parties' intent for the Court; another letter from Aetna's counsel similarly was devoid of any mention of releasing ARIC in its capacity as a reinsurer of the at-risk policy. The Court further determined that a claim involving ARIC as an at-risk reinsurer would only have accrued after the Settlement Agreement was ratified, and thus it would not have been the intent of the parties to release ARIC in such a capacity. Thus, the Court held that the Settlement Agreement did not release ARIC as a reinsurer of the at-risk policy.

The Court further concluded that the plaintiff was not entitled to bad faith sanctions or damages because defendants legitimately disagreed with the interpretation of the Settlement Agreement; defendants' refusal to pay the second installment was neither

---

[3] Vaughn v. Didizian, 435 Pa. Super. 436, 439 (1994).
[4] Restifo v. McDonald, 426 Pa. 5 (1967).

"frivolous" nor "unfounded." Thus, overall, the Court upheld the defendants' motion to enforcement the Settlement Agreement.

Resource America, Inc. v. Certain Underwriting Members of Lloyd's Subscribing to Policy No. 501/FT98AAAF, April Term 2003, No. 2709 (C.C.P. Phila. February 25, 2005) (Sheppard, J.); aff'd without opinion, 895 A.2d 657 (Pa. Super. 2006) (Court held that a party to a settlement agreement may collect the settlement amount from the insurer before fulfilling its payment obligation under the settlement agreement). This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/030402709-022505.pdf.

The plaintiffs settled a class action suit and their primary insurers paid their full policies. Plaintiffs turned to defendant insurer Lloyd's for the balance and Lloyd's refused, arguing that it did not owe anything because plaintiffs had not paid anything and thus had not suffered a loss. In support of its position, Lloyd's relied on a case[5] holding that when an indemnity is against a "loss," there is no right of recovery until there is an actual loss. The Court explained that a case[6] decided two years later made a crucial distinction between indemnity contracts and insurance contracts: in insurance contracts, the insured party is not expected to pay a judgment prior to being reimbursed by his insurer. The Court concluded that when the plaintiffs entered into the Settlement Agreement, they suffered a loss for which they are entitled to coverage from Lloyd's. Accordingly, the Court granted the plaintiffs' motion for assessment of damages.

[5] Coleman v. Bradford, 415 Pa. 557, 560, 204 A.2d 260, 261 (1964).
[6] Gray v. Nationwide Mut. Ins. Co., 422 Pa. 500, 507, 223 A.2d 8, 10 (1966).

The Treasurer of the State of Connecticut as Trustee for the State of Connecticut Retirement Plans and Trust Funds, et al., Derivatively on behalf of Keystone Venture V, L.P. v. Ballard Spahr Andrews & Ingersoll LLP, 866 A.2d 479 (Pa. Cmwlth. 2005) (Commonwealth Court upheld Settlement Agreement, holding that Court may not substitute its business judgment for judgments of parties).

Appellant law firm appealed the decision of the Commerce Court, which had denied an unopposed motion for final approval of a proposed settlement and an unopposed motion for final approval seeking reimbursement of costs, expenses, and fees in a derivative action brought by a venture capital investment partnership by five of its limited partners. The Court reversed the decision of the trial court and remanded the matter with directions to approve the Settlement Agreement.

Plaintiffs filed a complaint against defendant Ballard Spahr, alleging that the law firm breached its fiduciary duty to Keystone when it failed to advise the other Managing Directors of financial improprieties committed by another of its Managing Directors, and when it failed to properly advise about the negotiation of a settlement agreement with another company for the purpose of illegally diverting company funds. The parties engaged in extensive pre-litigation mediation which resulted in a settlement with Ballard Spahr. In the Settlement Agreement, defendant Ballard Spahr agreed to pay $4,499,640 to resolve the claims against it, with a stipulation that it denied the material allegations of the complaint and any and all wrongdoing. The plaintiffs filed an unopposed motion for approval of the Settlement Agreement and approval of the form and manner of notice. The trial court refused to approve the Settlement Agreement because the parties had not satisfied their burden to prove that the settlement was fair, reasonable, and beneficial to Keystone.

The Commonwealth Court first agreed with the lower courts that the Buchanan case[7] provided the appropriate law, and considered the following factors set forth in that case in approving the settlement: (1) the risks of establishing liability and damages, (2) the ranges of reasonableness of the settlement in light of the best possible recovery, (3) the range of reasonableness of the settlement in light of all attendant risks of litigation, (4) the complexity, expense, and likely duration of the litigation, (5) the state of the proceedings and the amount of discovery completed, (6) the recommendations of competent counsel and (7) the reaction of the plaintiffs to the settlement. The trial court's main problem with the settlement was that the recovery was 46% of the damages suffered; the court believed that assertion of conspiracy claims could have resulted in greater recovery, but the Claimants failed to make them. Furthermore, the trial court was bothered by the fact that the settlement was made prior to formal discovery, despite the parties' extensive informal document review.

The Court reviewed the trial court's decision on the basis of abuse of discretion. First, the Court observed that the trial court improperly gave no consideration to the fact that none of the parties objected to the settlement. Next, the Court noted that the lower court failed to consider the parties' motivations for avoiding the risks and expenses of litigation by entering into the settlement. It also "relied primarily on its own speculation as to the availability and likelihood of success on the fraud-based claims." Moreover, the fact that the settlement was reached in the early stages of litigation does not weigh

[7] Buchanan v. Century Fed. Sav. & Loan Ass'n, 259 Pa. Super. 37, 393 A.2d 704 (Pa. Super 1978).

against the approval of a settlement.[8] Additionally, the parties to the settlement were represented by experienced, competent counsel in arm's-length negotiations; there was no basis for the trial court to infer collusion where no such evidence existed. Essentially, the Court concluded that the trial court deviated from the principles set forth in Buchanan and Dauphin Deposit Bank & Trust Co.[9] Even though there was no formal discovery, the history of the negotiation process demonstrated that various litigation options had been fully evaluated by competent counsel. Moreover, the Claimants were sophisticated investors who held 71% of Keystone's limited partnership interests and approved of the Agreement; the other limited partners similarly approved of the resolution. Therefore, the trial court abused its discretion in substituting its business judgment for that of the Claimants and in refusing to approve a settlement to which there was no objection. Thus, the trial court's denial was reversed, and the matter was remanded with directions to approve the Agreement.

Aaron Wesley Wyatt v. Richard G. Phillips, January Term, 2002, No. 4165 (C.C.P. Phila. March 29, 2004) (Sheppard, J.) (Court held that settlement agreement required payment of attorneys' fees only for suits identified in the agreement), **aff'd without opinion, 918 A.2d 801 (Pa. Super. 2006)**. This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/020104165.pdf.

Plaintiff Wyatt sought attorney's fees for multiple litigations from defendant Phillips, relying on a Settlement Agreement. The Court granted fees for litigation specifically identified in the Settlement Agreement.

Prior to this case, the parties' corporation, Pilot, was involved in bankruptcy-related litigation in two states. Plaintiff Wyatt was a shareholder of Pilot and relied on a

[8] See In re AremisSoft Corp. Sec. Litig., 210 F.R.D. 109 (D.N.J. 2002); see also In re Safety Components, Inc. Sec. Litig., 166 F. Supp. 2d 72 (D.N.J. 2001).
[9] 556 Pa. 190, 727 A.2d 1076 (1999) (applying factors derived from Buchanan).

Settlement Agreement, Pilot's By-Laws, and Delaware law for his claim of reimbursement of attorneys' fees. The Court first noted that defendant Phillips was an individual and not a corporate entity. However, the Court held that "since Phillips has control of the corporate entities, the court deems it appropriate to go forward with a decision."

Upon reviewing the basis of plaintiff's claim, the Court held that all but one of the attorneys' fees claims should be reimbursed. The Court held that plaintiff's claim for attorneys' fees from the "John Edward's Federal Litigation" would not be reimbursed because: (1) it was not identified in the Settlement Agreement as litigation for which plaintiff would be reimbursed, (2) plaintiff was not a shareholder of Pilot at the time of that litigation and thus not entitled to reimbursement under the Stockholder's Agreement, and (3) plaintiff was not an officer or director at the time and thus Delaware law does not require reimbursement.

Thomas E. Booth v. Frank Zarzecki, October Term 2001, No. 04484 (C.C.P. Phila. February 5, 2004) (Jones, J.) (Court held that execution of settlement agreement does not necessarily negate a party's obligations under pre-existing agreements). This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/011004484.pdf.

Plaintiff filed suit against defendant in order to recover the balance due under a stock purchase agreement. The Court entered judgment in favor of plaintiff and held that plaintiff was also entitled to recover interest and attorney's fees.

The parties were both one-third stockholders in an ambulance business. Eventually, plaintiff decided to sell his shares in the company to defendant for $750,000; a Stock Purchase Agreement subsequently was executed by both parties. The initial

$550,000 was paid by wire transfer, with the remaining balance to be paid in accordance with the terms of the Stock Purchase Agreement.

Fourteen months prior to the next payment being due, plaintiff filed suit by Writ of Summons with the Philadelphia Court of Common Pleas. His claims included breach of fiduciary duty, breach of contract, civil conspiracy, and claims for punitive damages. Ultimately, the parties negotiated a Settlement Agreement. Shortly thereafter, defendant admitted at trial that he still owed plaintiff the remaining $200,000 pursuant to the original Stock Purchase Agreement; the parties subsequently executed the Settlement Agreement. In this action, defendant claimed that he was no longer obligated to pay plaintiff the remaining $200,000 because the terms of the Settlement Agreement released him from that obligation.

The Court concluded that the parties did not intend to release defendant from his obligation to fulfill the terms of the Stock Purchase Agreement. Not only had defendant testified in court that he still owed plaintiff the amount, there also was no discussion or mention of modification to the Stock Purchase Agreement in the Settlement Agreement. Thus, the Stock Purchase Agreement remained a binding contract between the parties. The Court noted that although the Settlement Agreement was "inartfully drafted," plaintiff clearly would not willingly give up his rights under the Stock Purchase Agreement.

Thus, the Court ordered the defendant immediately to pay the remaining balance of the Stock Purchase Agreement to the plaintiff in addition to interest, costs, and attorney's fees.

Academy Electrical Contractors, Inc. v. Nason and Cullen Group, Inc., July Term 2001, No. 3252 (C.C.P. Phila. Jan. 14, 2004) (Sheppard, J.) (Court refused to invalidate a release on grounds of economic duress claim because plaintiff failed to provide sufficient support). This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/academy_sj_denied_granted_order_memorandum.pdf.

The plaintiff subcontractors sued the defendants (general contractors, owners of three construction projects, and others) for failing to pay for work performed under and outside of its subcontracts. Plaintiffs asserted claims of unjust enrichment against the owners and asserted that one of the defendants should be liable for its debts under the piercing the corporate veil theory. Defendants filed a motion for summary judgment. The Court granted the summary judgment motion in part. Most notably, the Court granted summary judgment on the claims surrounding one project because the plaintiff signed a complete release in exchange for full and final payment for the project. Plaintiff argued that the release should be invalidated because it was executed under economic duress but the Court held that there was no evidentiary support for this argument.

The important elements of economic duress are: "(1) [that] there exists such pressure of circumstances which compels the injured party to involuntarily or against his will execute an agreement which results in economic loss, and (2) [that] the injured party does not have an immediate legal remedy."[10] Additionally, the "party against whom the defense is asserted must have placed the contracting party in the position which eliminated the party's exercise of free will."[11]

The Court reviewed the evidentiary record, which contained an affidavit from plaintiff's owner stating that at the time of the project plaintiff's line of credit was fully

[10] Litten v. Jonathan Logan, Inc., 220 Pa. Super. 274, 282, 286 A.2d 913, 917 (1972).
[11] National Auto Brokers Corp. v. Aleeda Dev. Corp., 243 Pa. Super. 101, 110-13 (1976).

extended and additional credit could not be obtained; the delay in payment thus may have contributed to financial difficulties for the company. Another expert for plaintiff opined similarly. The Court found this evidence insufficient to sustain plaintiff's burden of proof for economic duress. Specifically, plaintiff failed to provide any balance sheets, financial statements, or cash flow analysis for the time period in question. Moreover, plaintiff failed to establish any causal link between its financial hardships and the defendants' actions and without this critical link, the Court was unable to find any deprivation of free will. Furthermore, the Court observed that even if plaintiff could prove that it had signed the release under economic duress, its subsequent actions supported ratification: plaintiff waited two years to bring suit and failed to even mention the release in its amended complaint.[12]

Axcan Scandipharm, Inc. v. American Home Products, October Term 2002, No. 2167 (C.C.P. Phila. July 22, 2003) (Sheppard, J.) (Court dismissed fraud in the inducement of Settlement Agreement claim under the "gist of the action" doctrine because plaintiff's allegation was really a breach of a term of the contract). This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/ax-op.pdf.

Plaintiff Scandipharm sued defendant America Home Products (AHP), alleging, among other things, that AHP had breached a Settlement Agreement and had committed fraud in the inducement of that Agreement. AHP filed preliminary objections to the complaint, seeking dismissal and arbitration. The Court denied arbitration, but struck the plaintiff's claims of fraud, abuse of process, and requests for punitive damages and attorney's fees. The case proceeded on the remaining claims.

[12] See id. at 113 ("Ratification results if a party who executed a contract under duress accepts that benefits flowing from it, or remains silent, or acquiesces in the contract for any considerable length of time after the party has the opportunity to annul or avoid the contract.")

Scandipharm was licensed to distribute various pharmaceuticals manufactured by AHP. After Scandipharm was sued by third parties for patent infringement in connection to AHP's products, AHP assumed responsibility for the defense against those claims and settled the action. In the Settlement Agreement, AHP agreed not to seek contribution or reimbursement from Scandipharm for the settlement amount.

In unrelated actions, product liability claims were brought against Scandipharm and AHP. AHP brought indemnification claims against Scandipharm under their Licensing Agreement. The parties went to arbitration before Judge Gafni. AHP argued that it should be able to recover the patent settlement amounts as part of its damages, but Judge Gafni held that he lacked jurisdiction to rule on the patent settlement amounts.

Scandipharm brought the present action claiming, among other things, that the Settlement Agreement prevents AHP from recovering patent settlement amounts from Scandipharm. AHP filed Preliminary Objections claiming that all of Scandipharm's claims should be arbitrated and/or dismissed. The Court held that the Arbitration Agreement did not cover disputes over the breach of the Settlement Agreement.

Scandipharm alleged that it was fraudulently induced to enter into the Settlement Agreement because AHP expressly represented in the Agreement that it would not seek to recover the patent settlement amounts from Scandipharm. The Court dismissed this claim, holding that it was barred by the 'gist of action' doctrine, which "precludes plaintiffs from recasting ordinary breach of contract claims into tort claims . . . ."[13]

---

[13] Etoll, Inc. v. Elias/Savion Advertising, Inc., 2002 Pa. Super 347, 811 A.2d 10, 14 (Pa. Super. 2002) (noting that a tort claim is barred "where the duties allegedly breached were created and grounded in the contract itself . . . [or] the tort claim essentially duplicates a breach of contract claim or the success of the tort claim is wholly dependent on the terms of the contract." Id. at 16).

Scandipharm's allegation that AHP refused to uphold the express terms in the Settlement Agreement was really a claim for breach of the Agreement. The Court also dismissed the abuse of process claim, finding that AHP's demand for patent settlement amounts was, at most, overzealous representation. The Court held that Scandipharm was not entitled to punitive damages because such damages are unavailable for breach of contract claims. Also Scandipharm could not recover attorney's fees because, under "the American Rule," a party may not recover attorneys' fees from its adversary absent an express statutory or contractual provision allowing for the recovery of such fees.[14] Neither the Settlement Agreement nor the Arbitration Agreement included provisions for such fees.

Faith Assembly of God v. Ronald E. Payton, July Term 2001, No. 01637 (C.C.P. Phila. March 13, 2003) (Cohen, J.) (Court denied defendant insurer's motion for summary judgment where evidence indicated insurer may have been aware of insured's claim and questionable validity of a release made subrogation rights impossible to determine).
This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/faith303.pdf.

Plaintiff Faith Assembly of God ("Church") filed an action against its insurer Brotherhood Mutual Insurance Company ("Brotherhood"), a contractor and the contractor's insurer Kemper Insurance Company ("Kemper") to recover damages from a building damaged by fire while being renovated by the contractor. The Church had received money from Kemper and signed a release with Kemper. The Church asserted that Kemper did not pay all of the money due to the Church and turned to Brotherhood for payment. Brotherhood refused to pay, asserting that the Church never submitted a claim and impaired Brotherhood's subrogation rights by signing a release with Kemper.

[14] See Mosaica Academy Charter School v. Comm. Dept. of Educ., 572 Pa. 191, 813 A.2d 813, 822 (2002).

The Court noted that numerous documents indicated that Brotherhood may have been aware of the potential claim well beforehand. Moreover, the validity of the release remained at issue, thereby making its effect on subrogation rights impossible to determine. Thus, the Court denied Brotherhood's motion for summary judgment on the claim.

Barry Sandrow d/b/a Barry Sandrow Real Estate v. Red Bandana Co. d/b/a Ed London Wreath Co., July Term 2000, No. 3933, (C.C.P. Phila. May 23, 2002) (Herron, J.) (Court found that an unambiguous lease release absolved the tenant from allegedly unpaid rent), aff'd without opinion 821 A.2d 142 (Pa. Super. 2003). This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/sandrow.pdf.

The plaintiff owner sued the defendant tenant for rent and for damage from removing heaters installed by tenant. The Court entered a non-suit on the count for rent, but awarded damages from the removed heaters. The owner filed a motion for a new trial, challenging the holding about the rent. The Court denied the motion.

The plaintiff rented office space to the defendant with a five-year lease. During the course of the lease, the premises experienced continual water damage. Plaintiff allowed the defendant to use additional space on the second floor of the building for a smaller, additional charge to compensate for the water problem. The plaintiff received a notice from the Department of Revenue stating that he owed unpaid use and occupancy taxes for several years during the lease. After the defendant had vacated the premises upon expiration of the lease, the parties drafted a letter that included a check for the unpaid tax less the security deposit and that stated, in relevant part: "This represents payment in full for all taxes, expenses, and charges both past and future pertaining to 1500 E. Erie Ave. The exception being our portion of gas, electric, and cleaning….The intent of this agreement is understood."

The plaintiff sought a new trial for rent for the additional space on the second floor and damages from removal of the heaters. The tenant asserted that the release was a full release and plaintiff asserted that the letter released the tenants only from the tax payments.

In interpreting the letter, the Court first observed that "a release, like a contract, should be construed to determine the intention of the parties." Its scope must be determined from the ordinary meaning of its language, and where releases involve "clear and unambiguous terms, the court need only examine the writing itself to give effect to the parties' understanding."[15] The Court compared the language of the release and of the original lease and concluded that the release covered all rents due at the time that the release was executed, finding the language was unambiguous. Consequently, the Court denied plaintiff's request for additional unpaid rent stemming from the use of the upstairs space.

Medline Industries, Inc. v. Beckett Healthcare Inc., September Term, 2000, No. 295 (C.C.P. Phila. November 15, 2001) (Herron, J.) (Court held that settlement was enforceable even though the parties had not agreed on formal language of release, and the release must be interpreted narrowly to cover only matters contemplated by the parties). This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/medline12.pdf.

Plaintiff Medline filed this action against defendants Beckett and Legend Healthcare, Inc., for failure to pay for goods received. Medline and Legend engaged in settlement discussions but could not agree on release language. The Court agreed that there was a settlement and limited the release to the Court's understanding of the intent of the parties.

[15] See Seasor v. Covington, 447 Pa. Super. 543, 547, 670 A.2d. 157, 159 (1996).

Counsel for Legend faxed a letter to Medline's attorney offering a $5,000 settlement offer "in exchange for a general release of all claims your client has against Legend Healthcare, Inc." After a subsequent telephone conversation between the attorneys, defense counsel faxed another letter to plaintiff's counsel confirming that Medline had accepted Legend's settlement offer. Plaintiff's counsel then drafted and executed a Release in which Medline released Legend from liability for "all matter of actions and causes of actions, claims, and demands which were set forth in the pleadings in the aforementioned civil action." Defense counsel received the Release on April 25, 2001, and proposed new, broader release language that would release Legend from any and all claims that were *or could have been* brought by Medline prior to the execution date.

The parties were unable to agree on the release language, and Medline filed this motion to enforce settlement. Although the parties agreed that settlement was reached, they differed in their interpretations of which Medline claims against Legend were precluded.

The Court first turned to Mazzella v. Koken,[16] a Pennsylvania Supreme Court decision holding that settlement agreements are governed by the principles of contract law, and need not be formalized in writing if the parties have orally agreed to the essential terms of the contract ("[M]anifested mutual asset to the [material] terms of a bargain."). The Court agreed with the parties that a settlement was reached, and turned to the settlement's interpretation.

---

[16] 559 Pa. 216, 224-25, 739 A.2d 531 (1999).

The Court noted that Pennsylvania courts traditionally interpret releases as covering only matters that can be fairly said to have been within the contemplation of the parties when the release was executed. The Court observed that inquiry into the intent of the parties and the circumstances surrounding the release is critical; looking to the language of the release alone is insufficient. Using these principles, the Court determined that the circumstances of the case "support the inference that the term 'all claims your client has against Legend Healthcare, Inc.' [referred] to all of those claims brought against Legend in the instant case." These circumstances included the fact that plaintiff's counsel had no knowledge of any other claims that Medline held against Legend other than those in this case, that he never discussed any other claims with defense counsel, and that defense counsel never verbally expressed to plaintiff's counsel a desire that the release cover any claims not set forth in Medline's complaint. Moreover, the Court noted that defense counsel's use of the present tense in his April 10, 2001 letter (referring to claims that Medline 'has' against Legend) further confirmed that he intended the settlement to reach claims that were already in existence rather than future claims. The subject lines of the letters also referenced the current claim only.

Therefore, the Court held that defense counsel's letter of April 10, 2001, was binding as a release and supported Medline's interpretation of the document.

George V. Branca v. John E. Conley, February Term 2001, No. 2277 (C.C.P. Phila. October 30, 2001) (Herron, J.), (under Colorado law, the language of the settlement agreement released claims that plaintiff had been fraudulently induced to sign agreement) **aff'd without opinion, 823 A.2d 1021 (Pa. Super. 2003)**. This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/branca.pdf.

The Court held that under Colorado law a settlement agreement was valid which released all of the plaintiff's claims against the defendant, including the claim that he had

been fraudulently induced to sign the settlement agreement. Additionally, the Court held that the plaintiff could not recover for monetary gains after the date that the plaintiff resigned as a member of the company. The preliminary objections were sustained and the complaint was dismissed.

In exchange for a capital contribution, plaintiff Branca received an interest in the Cactus Integration Group, LLC, and was appointed executive vice-president and COO. On September 31, 1999, plaintiff tendered his voluntary resignation from Cactus. Two months later, Cactus informed plaintiff that, as per their Operating Agreement, they intended to exercise their option to purchase plaintiff's membership interest in the company. On January 27, 2000, following the conditions of the Operating Agreement, Cactus determined that the fair market value of plaintiff's interest was $131,817. One of the defendants allegedly told plaintiff that fighting about his interests could cause Cactus to fail. Also, Cactus's lawyer did not respond to inquiries by plaintiff's lawyer about whether there were any potential sale discussions. However, during the same time period, Cactus was allegedly in discussion with another company regarding the impending sale of Cactus's assets but did not disclose this information to plaintiff.

In May, 2000, Cactus informed plaintiff that it was willing to pay $425,000 for his membership interest. Consequently, the parties entered into a Settlement Agreement and Mutual General Release on June 6, 2000, whereby plaintiff's interest was transferred to Cactus for $425,000. On July 11, 2000, Cactus was sold for thirty million dollars; the buyer announced that during the twelve-month period ending March 31, 2000, Cactus had had sales of $45.5 million and operating profits of $2.1 million. Plaintiff filed a complaint asserting counts for breach of fiduciary duty, fraud, and civil conspiracy. The

defendants filed preliminary objections on the grounds that plaintiff's claims were barred by the General Release of the Settlement Agreement.

Since the Settlement Agreement stated that it shall be governed by Colorado law, the Court followed Colorado's substantive law and Pennsylvania's procedural law.

The Court considered whether the Release in the Settlement Agreement effectively bars all of plaintiff's claims, including those of fraud, or whether the fraud exception to the parol evidence rule is applicable under these circumstances. Plaintiff also argued that neither party intended the final version of the Settlement Agreement to include fraud because the final draft of the Release (unlike the original draft) bore no specific fraud-release provision. The language of the Settlement Agreement stated:

> Branca hereby releases Cactus and its members, managers, employees agents, successors and assigns from **all** actions, causes of action, claims, debts and liabilities of **any kind** arising out of or relating to his association with Cactus or the termination of that association, **whether known or unknown, including, but not limited to, any claims relating to the value of his membership interest**.

The Court also noted that the language of the Settlement Agreement included standard representations and warranties that both parties received legal advice, had made all desired changes prior to executing the Settlement Agreement, etc., and that this Agreement was the final written expression of the parties' settlement.

Turning to Colorado law, the Court observed that "the terms of a contract intended to represent a final and complete integration of the agreement between the parties are enforceable and extrinsic and parol evidence offered to prove the existence of prior or contemporaneous agreements is inadmissible." The exception to the parol evidence rule is when there is a claim of fraudulent misrepresentation and/or negligent misrepresentation in the inducement of a contract, but this exception is only applicable

when tort claims are not *specifically* prohibited by the terms of the Settlement Agreement.

In this case, the Settlement Agreement did indeed have sufficiently clear, unambiguous, and specific language releasing Cactus from all claims, including those related to plaintiff's membership interest. The Court concluded that this language precludes the use of the parol evidence exception in these circumstances. Moreover, the Court was persuaded by the representations and warranties section of the Settlement Agreement, noting that both parties were represented by counsel and had made sufficient investigation prior to entering into the Agreement. Similarly, the fact that a prior draft of the Settlement Agreement specifically mentioned fraud and that the final version did not mention fraud was not relevant.

Finally, the Court concluded that, since the Settlement Agreement stated that plaintiff's status as a member and manager of Cactus terminated on October 1, 1999, plaintiff could not recover for events (such as the sale of Cactus's assets) that occurred after his resignation.

MESNE Properties, Inc. v. Penn Mutual Life Insurance Co., July Term 2000, No. 1483 (C.C.P. April 6, 2001) (Herron, J.) (Court held that release language in a settlement agreement that absolves a party from liability for claims accruing prior to its execution does not cover subsequent claims). This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/mesne2.pdf.

In 1990, plaintiff MESNE entered into a loan agreement with defendant Penn Mutual to purchase an office building and parking lot and granted defendant a mortgage on the property. In 1997, defendant commenced an action for confession of judgment on the loan agreement. The parties entered into a settlement under which the plaintiffs discharged defendant from all mortgage-related liability arising from events prior to the

date of the Agreement. Plaintiffs alleged that the mortgage was fully satisfied by October 31, 1997. In October, plaintiffs made a tender of expenses to defendant and requested that it mark the mortgage satisfied. When defendant failed to respond, plaintiffs sent a written demand to defendant's supposed agent at Drinker Biddle & Reath, LLP on June 4, 1999. Defendant again failed to respond. Eventually, in September 2000, when plaintiffs attempted to refinance the property and complained to defendant again, it finally marked the mortgage satisfied. The plaintiffs consequently incurred various expenses and were forced to pay a higher interest rate for refinancing.

According to defendant, the Settlement Agreement absolved it of all liability connected to the mortgage because it included a release provision. The release applied to liability arising from "agreements, transactions, occurrences, acts or omissions whatsoever that were commenced, done, or committed, or occurred at any time prior to the date of the Agreement." Although the Settlement Agreement was not dated, the Court noted that it was executed at least before October 31, 1997. Since defendant refused the demand to mark the note satisfied in summer of 1999, defendant was not absolved of liability for this lack of action – the claim had not accrued prior to the date of execution of the settlement.

<u>PARTIES TO A SETTLEMENT AGREEMENT OR RELEASE</u>

<u>Terry Johnson v. Perfect Order, Inc.</u>, October Term 2008, No. 1972 (C.C.P. Phila. Jan. 30, 2011) (New, J.) (Court held that the language of the release required the dismissal of all the individual defendants). This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/081001972.pdf.

The parties had entered into a release that was clear and related to all actions arising from the sale of their company. The Court upheld the release and dismissed the individual defendants who were parties to the release.

Plaintiff Johnson joined defendant Perfect Order, Inc., as vice president of sales and owner of thirty-three percent of the shares in the companies. With the knowledge and approval of the Board of Directors, he took another position for a company called CommNav. CommNav eventually became a division of Perfect Order, Inc. The Board agreed to pay plaintiff $400,000 for the work he performed at CommNav when Perfect Order, Inc. had the funds. The claim was arbitrated.

Before the Court, plaintiff had initiated an action for statutory penalties and attorney's fees under the Pennsylvania Wage Payment and Collection Law against individual defendants. The individual defendants refused to pay, arguing that they were protected by a Settlement Agreement and Mutual Release signed by them and the plaintiff. The Release related to the acquisition of Perfect Order by other companies and released the individual defendants "from any and all actions" related to the sale. The Court found no fraud, accident or mistake and that the claim under the Wage Payment and Collection law related to the sale of Perfect Order, Inc. Therefore, the Court dismissed the individuals as defendants.

<u>Anthony Biddle Contractors, Inc., v. Preet Allied American Street, L.P., Abington Savings Bank, and American Street Lofts, LLC,</u> March Term 2009, No. 00323, (C.C.P. Phila. September 22, 2010) (Bernstein, J.) (Court held that plaintiff had failed to provide any evidence that two of the defendants were liable for fulfilling the terms of the settlement agreement). This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/090300323.pdf.

Plaintiff contractor entered into a settlement agreement with defendant owner of condominium. When defendant bank sold the unit at a sheriff's sale to a third party, the plaintiff sued the original owner of the condominium, the bank and the new owner. The Court dismissed the bank and the new owner of the condominium, finding that plaintiff failed to allege any facts making them liable to plaintiff.

Plaintiff Anthony Biddle Contractors, Inc. ("Biddle") was a contractor for a condominium owned by defendant Preet Allied American Street, L.P. ("Preet"). After Biddle sued Preet for payment for work performed, the parties entered into a Settlement Agreement under which Biddle would purchase one of the units of the condominium. Defendant Abington Savings Bank gave Preet a loan to fund the construction of the condominium.

When Preet failed to close on the sale of the unit, Biddle filed this action to enforce the Settlement Agreement. In the meantime, Abington Savings Bank called a default and sold the condominium at a sheriff's sale to defendant American Street Lofts, LLC. Biddle joined Abington Savings Bank and American Street Lofts as defendants, claiming that American Street Lofts was an alter ego of Abington and asserting claims for specific performance, promissory estoppel, constructive trust, and intentional interference with contract against both of these defendants. Both defendants moved for summary judgment.

The Court held that Biddle failed to offer any evidence to show that American Street Lofts was an alter ego of Abington, and therefore American Street Lofts was dismissed from the case.

The Court also held that Biddle had failed to produce any evidence against Abington for promissory estoppel, specific performance, constructive trust/unjust enrichment or tortious interference with contract. None of the facts showed that Abington had made any promise Biddle anything or had agreed to anything with Biddle. Therefore, Abington Savings Bank was also dismissed from the case.

Albert M. Greenfield & Co., Inc. v. Mark L. Alderman, May Term 2000, No. 1555 (C.C.P. July 31, 2001) (Herron, J.) (Court held that a release agreement does not apply to a party who is not explicitly named in the release). This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/green631.pdf.

Plaintiff Greenfield filed a motion for summary judgment arguing the applicability of a release agreement between defendant law firm Wolf, Block, Schorr & Solis-Cohen, LLP and Quinnco, a real estate owner. Plaintiff argued that the release also released it, a real estate broker, from liability for the counterclaims. The Court denied the plaintiff's motion, finding that the release did not apply to plaintiff because it was not included in the release.

Defendant Wolf Block entered into negotiations to lease office space from Quinnco, the building's owner. Plaintiff Greenfield was appointed by Quinnco as the exclusive leasing agent of the property. Wolf Block allegedly relied upon representations that Greenfield made in its capacity as agent. However, the lease negotiations fell apart when the parties could not come to agreement on the terms. Wolf Block sued Quinnco for damages arising from Quinnco's breach of the lease deal; Greenfield was not a party

to that suit. Quinnco and Wolf Block eventually settled the claim and executed a release agreement.

Greenfield then sued Wolf Block in this action for breach of fiduciary duty, legal malpractice, interference with prospective contractual relations, and fraudulent misrepresentation and non-disclosure in three real estate transactions, including the lease of Wolf Block's office space from Quinnco. The defendants counterclaimed against Greenfield that it misled the law firm into believing that Quinnco understood and accepted their terms for the lease; that they detrimentally relied on its representations; and that it breached its express and implied warranties of authority to negotiate and finalize the lease deal. Greenfield argued that the prior release agreement between Quinnco and Wolf Block absolved it from liability for such claims.

The Court explained that releases are to be given effect within the ordinary meaning of their language and must be construed narrowly and in light of the circumstances at the time of execution.[17] In this case, the parties to the release were Wolf Block, all of its partners, Quinnco, Mark Alderman, SunAmerica, Inc. and SunAmerica Affordable Housing Partners. The release's language released the named parties "and their respective officers, directors, shareholders, partners, members, affiliates, subsidiaries, and representatives" from claims arising from "any and all alleged negotiations, discussions, and/or representations by any one, including without limitation, any of the parties hereto or their representatives, regarding the proposed lease . . . ." It also stated that it was "solely for the benefit of the parties, hereto, the Quinnco/Sun Release and the Wolf Releases and no other person or entity shall be entitled to any rights

[17] See Vaughn v. Didizian, 436 Pa. Super. 436, 439, 648 A.2d 38, 40 (1994).

or benefits arising under this Agreement." Third parties had no rights in the agreement. Greenfield contended that it was a "representative" of Quinnco for the purposes of the release. The Court, however, noted that all of the Quinnco entities and parties were explicitly named in the Agreement, and Greenfield was not. Moreover, the term "their…representatives" modified Quinnco and Quinnco entities but did not connote separate and independent agents of Quinnco, such as a broker. The Court decided that the release, when read in its entirety, appeared only to cover those entities of Quinnco and not also third parties. Therefore, the plaintiff's motion for summary judgment was denied.

MODIFICATION OF THE TERMS OF SETTLEMENT AGREEMENT OR RELEASE BY THE PARTIES:

Carson/DePaul/Ramos, A Joint Venture v. Driscoll/Hunt, a Joint Venture, February Term 2004, No. 02166 (C.C.P. Phila. June 29, 2006) (Abramson, J.) (Court held that terms of releases/waivers can be modified by separate written/oral agreements upon a showing of intent to alter such terms). This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/040202166.pdf.

Plaintiff subcontractor (RCD) filed suit against defendant construction manager (DH), seeking to recover over $10 million in impact cost/delay damages incurred during the construction of Citizen's Bank Park stadium. DH moved for partial summary judgment, alleging that RCD's claims were barred under previously executed releases and waivers. Its motion for summary judgment was denied.

When RCD was hired to install concrete foundations for the stadium, it entered into a Subcontract Agreements with DH which provided that RCD would submit impact

claims to DH within certain timeframes and included a clause prohibiting oral modifications. However, when cost difficulties arose one year into the project, DH and RCD met and eventually exchanged letters agreeing to "put these [impact cost] issues on the sidelines to get the project completed" and to discuss these issues at a later time. Both before and after this exchange, RCD received periodic payments for completed work. These payments required RCD to submit a Statement of Contractor, which stated, in part "no other monies are claimed to be or are due from DH." RCD's periodic payments were also contingent upon their execution of waivers as required by the Subcontract. These waivers stated that "the undersigned hereby waives, releases, and relinquishes any and all claims, rights or causes of action whatsoever arising out of the work performed…" Later, RCD informed DH in writing that it has incurred almost $10 million in impact damages during the course of the project. DH refused to pay, alleging that the claim had been released via the waivers. RCD brought this action five months later.

The Court first noted that the statements and waivers could hypothetically preclude such a claim. However, in this case there was evidence that the parties agreed separately in writing (the letters) to allow the impact claims to be submitted despite the release language. The letters evidenced intent by the parties to modify the Subcontract's requirements with respect to the timing of submission of impact claims, thereby also implicitly modifying the language of the release contained in the statements and waivers with respect to those claims. There was sufficient consideration given for this modification, since RCD gave up its right to bring existing claims for the right to bring them later. The Court also observed that it was unclear whether the modification applied

only to pre-existing claims or to all claims and allowed the parties to offer parol evidence at trial on this issue. Therefore, DH's motion for partial summary judgment regarding the released claims was denied.

Nand Todi v. J&C Publishing, Inc., June Term 2002, No. 2969 (C.C.P. Phila. July 17, 2003) (Cohen, J.) (Court held that a party to an oral, recorded settlement agreement may not later attempt to alter the terms of the agreement when reducing it to writing; the original agreement is valid and binding). This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/todi703.pdf.

Plaintiff filed this action to collect money he lent to defendant. The Court found that the Settlement Agreement which had been put on the record was enforceable even though it had not been reduced to writing.

Plaintiff Todi lent defendant Strusberg money to launch a real estate website. The website never became operational and Todi then filed two actions for repayment of the loan. Eventually, a settlement conference was held between Strusberg, Todi, and their respective counsel, whereby they agreed to various terms for repayment of the loan. The material terms of the settlement were placed on the record, and both parties testified that they agreed to the recorded terms. Later, Todi's counsel forwarded a written draft of the Agreement to Strusberg's counsel; this draft included material terms, such as a non-compete provision, which differed from the original Agreement. When Strusberg refused to execute the new Agreement, Todi filed this action for declaratory judgment in addition to a variety of contract and tort claims for damages. Strusberg counter-claimed.

The Court explained that settlement agreements are governed by contract law, and thus must possess all of the elements of a valid contract. Ultimately, "the minds of the parties should meet upon all the terms, as well as the subject-matter, of the agreement." Whether or not the agreement is reduced to writing, then, becomes irrelevant so long as

the parties have agreed upon the material terms. Therefore, "in the absence of fraud and mistake, courts are loathe to second guess or undermine the original intention of the parties to a settlement agreement." Since both Todi and Strusberg testified that they agreed to the terms and did not condition the existence of an agreement on execution of a writing, the Court held that the original agreement was enforceable and binding upon both parties. The Court found that the plaintiff had plenty of time during the Settlement Agreement's negotiations to object or attempt to alter the material terms of the document, but he did not do so.

JURISDICTION OF ACTION RELATING TO SETTLEMENT AGREEMENT OR RELEASE

Diane Burman v. Steven L. Burman, June Term 2006, No. 3902 (C.C.P. Phila. Jan. 22, 2007) (Sheppard, J.) (Court held that Delaware County Court retained jurisdiction over claims related to a stock transfer agreement between ex-spouses which arose from the parties' distribution of marital property under a Settlement Agreement; the two agreements were to be considered together), **aff'd in part, reversed in part without opinion, 935 A.2d 2 (Pa. Super. 2007)** (Held that matter is to be transferred to Delaware County Court of Common Pleas as reflected in case docket).
This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/060603902.pdf.

Plaintiff ex-wife filed a claim alleging fraudulent and tortious conduct, negligent misrepresentation, and breach of fiduciary duty by her ex-husband in his role as an officer and director of a corporation. She further alleged that defendant's action forced her to sell her majority interests in the corporation at a fraction of their fair market value. The trial court dismissed plaintiff's action and she appealed. The Court upheld its prior order, supporting defendant's preliminary objections that plaintiff's action was precluded by the terms of their Settlement Agreement. Thus, plaintiff's claim was dismissed

without prejudice to seek relief, if appropriate, in the Delaware County Court of Common Pleas.

Plaintiff and defendant were married from 1984 through July 2005. They were also the sole shareholders and directors of a closely-held Pennsylvania corporation. In July 2005, a divorce decree was entered on behalf of the parties; subsequently, the parties executed a Property Settlement Agreement. In keeping with this Agreement, plaintiff transferred her interest and shares in the corporation to defendant for $150,000, pursuant to a Stock Transfer Agreement. In June 2006, plaintiff filed a complaint seeking to rescind the Transfer Agreement on the grounds of fraud in the inducement, breach of fiduciary duty, and duress. Defendant argued that plaintiff's claim was precluded by the terms of the Settlement Agreement.

The Court emphasized that, in Pennsylvania, the "Family Court retains jurisdiction over the disposition of property rights and interests between spouses, including those created under separate agreement, even after a final divorce decree is entered."[18] Thus, the Court concluded that it lacked subject matter jurisdiction over plaintiff's suit since the claim was connected to the Settlement Agreement and to the final divorce decree entered in Delaware County.

Additionally, the Court noted that both parties were represented by counsel when executing the Settlement Agreement. Moreover, the Agreement clearly established the terms of the subsequent interest transfer. Similarly, the Transfer Agreement incorporated the terms of the Settlement Agreement; here the Court stressed that "where two writings relate to the same subject matter, they should be construed together and interpreted as a

---

[18] Johnson v. Johnson, 2004 Pa. Super. 482, 864 A.2d 1224 (2004).

whole." Essentially, the Court disagreed with the plaintiff's attempt to separate the Transfer Agreement from the Settlement Agreement, instead viewing them as "a single unified expression of the intent of the parties."

Therefore, since the Transfer Agreement arose from the parties' distribution of marital property, the Delaware County Court retained proper jurisdiction of the action. The Court sustained the defendant's preliminary objections and dismissed the plaintiff's case without prejudice.

University Mechanical & Engineering Contractors Inc. v. Insurance Co. of North America, November Term 2000, No. 1554 (C.C.P. Phila. May 1, 2002) (Sheppard, J.) (Court dismissed without prejudice declaratory action against insurance company regarding a settlement for failure to join indispensable parties)**, aff'd without opinion, 839 A.2d 1172 (October 20, 2003)**. This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/univ-op.pdf.

Plaintiff sought declaratory judgment as to whether it owed the defendant insurer money from a settlement. Insurer filed a motion to dismiss the action for lack of subject matter jurisdiction arising from failure to join all indispensable parties. The Court dismissed the complaint without prejudice.

The underlying dispute arose from a hospital construction project in California. After completion of the project, the hospital sued the general contractor for construction defects; the general contractor filed cross-claims against the plaintiff, University Mechanical & Engineering Contractors Inc. ("UMEC"). The defendant insurer funded a settlement and obtained a release on UMEC's behalf. UMEC sought a declaratory judgment that it did not owe the money back to the insurer. The insurer sought to dismiss the case because UMEC failed to join a number of indispensable parties.

The Court applied Pennsylvania law and held that failure to join an indispensable party to a declaratory judgment action deprives a court of subject matter jurisdiction.[19] The Court reviewed the Settlement Agreement and found that it was not specifically for UMEC but was broad in scope and involved numerous other defendants. The Court also found that the underlying action had not been dismissed and the trial was pending. As a result, the Court held that other parties to the California litigation should have been joined as indispensable parties. Additionally, other insurers who contributed to the settlement fund should have also been joined. Consequently, UMEC's complaint was dismissed without prejudice for lack of subject matter jurisdiction stemming from its failure to join indispensable parties.

CLASS ACTIONS

Cutting Edge Sports, Inc. v. Bene-Marc, Inc. v. North American Sports Fed., March Term 2003, No. 01835 (C.C.P. Phila. August 10, 2007) (Abramson, J.) (in a class action settlement, attorneys' fees will be paid out of the total settlement amount; the 'common fund' exception did not apply). This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/030301835-081007.pdf.

In a prior class action, the members of the plaintiff's class were awarded damages of $20,000, out of which $12,208.54 was to be paid to cover attorneys' fees. The plaintiffs argued that they were instead entitled to a separate judgment for attorneys' fees. The Court denied their claim for the fees.

The American Rule regarding attorneys' fees, codified in 42 Pa. C.S. §1726(a)(1), states that "a litigant cannot recover counsel fees from an adverse party unless there is express statutory authorization, a clear agreement of the parties, or some other established

[19] See Vale Chemical Co. v. Hartford Accident and Indemnity Co., 512 Pa. 290, 516 A.2d 684 (Pa. 1986).

exception." One such exception is the "common fund" exception, which applies when "an action by one beneficiary of a pre-existing fund protects the interests of the other beneficiaries, thus justifying an award of attorney fees from the fund."[20] The Court explained that the "common fund" exception has been applied narrowly and is typically invoked where attorneys' efforts have protected or preserved an estate or fund from waste, dissipation, or fraudulent claims. Since this was not the scenario in this case, the Court affirmed its previous dismissal of the plaintiffs' request for additional attorneys' fees and litigation costs.

John R. Gregg, M.D. v. Independence Blue Cross; Robert P. Good, M.D. v. Independence Blue Cross; Pennsylvania Orthopaedic Society v. Independence Blue Cross, December Term 2000, No. 03482, No. 00005 (lead case), No. 00002 (C.C.P. Phila. April 22, 2004) (Sheppard, J.), aff'd by, Pa. Orthopaedic Soc'y v. Independence Blue Cross, 2005 Pa. Super. 344, 885 A.2d 542 (Pa. Super. 2005) (Class action settlement agreement determined to be fair and reasonable under the factors of prevailing Pennsylvania law). This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/001203482.pdf.

Three health care providers brought class action lawsuits against defendant health insurers and the cases were consolidated. Plaintiffs sought injunctive relief, claiming that the insurers improperly denied or reduced the amount of reimbursement due to the providers for medical care provided by them to the insurer's subscribers. The plaintiffs moved for certification and final approval of a settlement agreement. Intervener objectors filed objections to the settlement and the defendants moved to invalidate opt-outs. The Court certified the class, approved the class settlement, overruled all of the objections, and granted the motion to invalidate the opt-outs.

[20] See also Nagle v. Pennsylvania Insurance Dept., 46 Pa. Commw. 621, 406 A.2d 1229 (1979); Fitzgerald v. Philadelphia, 87 Pa. Commw. 482, 489, 487 A.2d 485, 489 (1985).

The crux of these cases hinged upon claims that defendant health insurance companies failed to properly reimburse plaintiff doctors for medical services that they provided to their patients. After the initiation of these actions, the parties in the three joined suits negotiated for six months about a potential settlement agreement (Agreement).

The Court first certified the class, as per the five factors of Rule 1702 of the Pennsylvania Rules of Civil Procedure. Next, the Court evaluated the Settlement Agreement, holding that settlement agreements are entitled to a presumption of fairness. The Court considered the following factors in determining whether the presumption of fairness was established: (1) the settlement was at arm's-length, (2) there was sufficient discovery, (3) counsel was experienced in similar litigation, and (4) the number of objectors were not large when compared to the class as a whole.[21] The Court determined that the parties met all of these factors. Next, the Court considered whether the Settlement Agreement fell within the range of reasonableness, and reviewed the following seven factors: (1) the risks of establishing liability and damages, (2) the range of reasonableness of the settlement in light of the best possible recovery, (3) the range of reasonableness in light of the risks, (4) the complexity, expenses, and likely duration of the litigation otherwise, (5) the state of the proceedings and the amount of discovery completed, (6) the recommendations of competent counsel, and (7) the reaction of the class to the settlement. The Court discussed each factor and its analysis in detail, ultimately concluding that the settlement was indeed fair. The Court also addressed

---

[21] See Dauphin Deposit Bank and Trust Co. v. Hess, 556 Pa. 190, 197, 727 A.2d 1076, 1080 (1999); see also Milkman v. American Travelers Life Insurance Co., 61 Pa. D. & C. 4th 502 (Pa. Ct. Com. Pl., Phila. 2002).

objections that the release was overly broad, and concluded that the value of the Settlement Agreement was large enough to merit a broad release; furthermore, the release did not go so far as to release the defendants from future claims. After thorough discussion, the Court approved the Settlement Agreement, holding that it was substantively fair and reasonable.

MALPRACTICE ACTIONS RELATING TO SETTLEMENT AGREEMENTS:

Jan Rubin Associates, Inc. v. Nixon Peabody, LLP, June Term 2007, No. 0916 (C.C.P. Phila. July 31, 2008) (Sheppard, J.) (Court denied defendant law firm's motion for judgment on the pleadings because plaintiffs alleged that defendant did not educate them as to legal ramifications of claim and plaintiffs were thus forced to settle the other action to their detriment; plaintiffs were not simply reconsidering their decision to settle the underlying action).
This Opinion is available at http://www.courts.phila.gov/pdf/cpcvcomprg/070600916.pdf.

Plaintiffs sued their law firm alleging that the law firm had not educated plaintiffs on the legal ramifications of their claims in another action and plaintiffs had been forced to settle that other action to their detriment. Defendant law firm filed a Judgment on the Pleadings, arguing that the plaintiffs could not sue defendant law firm because plaintiffs had settled the other action. The Court denied defendant's motion.

Plaintiffs hired defendant law firm Nixon Peabody, LLP to represent them in a case against the Housing Authority of Newport, Kentucky in the federal court in Kentucky. The Housing Authority filed counterclaims. Then, the Kentucky court granted summary judgment for the Housing Authority, dismissing all counts against them. The parties entered a settlement agreement for the Housing Authority to dismiss counterclaims against plaintiffs.

Plaintiffs then filed this legal malpractice action against defendant law firm. Defendant moved for Judgment on the Pleadings, arguing that (1) plaintiffs' claim is barred because a client who enters a settlement agreement may not then institute a malpractice action against the attorney and (2) that plaintiffs failed to allege a prima facie case of malpractice because they signed a certificate stating that no discrimination existed in the underlying action.

The Court held that plaintiffs' settlement of the underlying action did not preclude the instant case against the defendant. Plaintiffs' suit was not based on plaintiffs changing their minds about the settlement. Rather, plaintiffs claimed that defendant failed to advise them regarding the applicable law and its ramifications. The Court also held that disputed issues of fact exist about whether defendants educated plaintiffs as to the potential consequences of pursuing a claim.